91-1914

Supreme Court, U.S.
FILED
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Case No.

United States Supreme Court

October Term 1991

James R. Shore
Petitioner - Appellant

v.

Commissioner of Internal Revenue,
Respondent - Appellee

Petition for Writ of Certiorari to the United States Court of Appeals for the sixth circuit

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Petition for writ of Certiorari

James R. Shore, PRO SE
825 Harrison St
Belding MI 48809

I. Whether the tax court properly decided that the petitioner could not deduct expenses while away from home for the years 1984 and 1985 before concluding that petitioners initial relocation was classified as temporary or permanent employment, which, if temporary, could allow some if not all of the expenses incurred while away from home to be deductible?

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The U.S. 6th Circuit Order Dated Jan 22, 1992

The U.S. 6th Circuit Order Dated May 14, 1992

The U.S. 6th Circuit Order Dated Nov 07, 1991

The U.S. Tax Court decision Dated Aug 08, 1990

U.S. Tax Court Memo 1990-272, Filed May 31, 1990

References to earlier opinions

a) United States Tax Court, Docket No. 31001-88, T.C. Memo. 1990-272, filed May 31,1990.

b) United States Tax Court, Docket No. 31001-88, Decision entered on August 9, 1990.

c) United States Court of Appeals, Sixth Circuit, Case No. 90-2272, Order to deny petitioner's request to stay tax collection entered on May 14, 1991.

d) United States Court of Appeals, Sixth Circuit, Case No. 90-2272, Order affirming decision of tax court entered November 7, 1991.

e) United States Court of Appeals, Sixth Circuit, Case No. 90-2272, Order to deny petitioner's request for rehearing entered on January 22, 1992.

Grounds of Jurisdiction

i) Date of entry of the judgment or decree sought to be reviewed: January 22, 1992, - Denial for rehearing date. From U.S. Court of Appeals, Sixth Circuit.

ii) No rehearing is pending nor has any been respected and no time extensions have been requested or required.

iii) This is not a cross - petition.

iv) Jurisdiction is based on rules of the Supreme Court, Rule 10.1(a) and 10.1(c).

Statutes Involved

Internal Revenue Code of 1954 (26 U.S.C.):

Sec 162 (a): IN GENERAL - There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including -

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances while away from home in the pursuit of a trade or business (1) AND

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or in not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.00.

I.R.S. Publication 463: 1984,5 Tax Home - Temporary assignment or job. Although you regularly work or carry on your business activities within the city or general area of your home, you may have to work or conduct business at another location. It may not be practical to return home from this other location at the end of each day's work. Generally, it you expect employment to last for less than one year, whether your new work assignment is temporary or indefinite depends on all the facts and circumstances.

If your assignment or job away from your regular place of work is temporary, that is if its end can be foreseen within a fixed and reasonable short time, of usually less than one year, your tax home does not change. You are considered to be away from home for the whole period and your travel expenses are deductible.

An assignment or expected to last for a year or more is considered indefinite and presumed not to be temporary. If an assignment or job is indefinite, you are not considered to be away from home and your travel expenses are not deductible. Under certain circumstances, you may over-come this one-year presumption if the assignment or job is expected to, and does, last for one year or longer, but less than 2 years or longer is considered on indefinite stay, regardless of the facts or circumstances.

New job. You may deduct amounts you spend for travel expenses, including meals, jubject to the limit, and lodging, in looking for a new job in your present trade or business. You may not deduct these expenses if you are looking for work in a new trade or business or in looding for work for the first time. If you are unemployed, and there is a substantial bread between the time of your past work and your looking for new work, you may not deduct these expenses, enen if the new work is in the same trade or business as your last previous work.

Concise Statement of Facts

Petitioner Mr. Shore a designer/engineer. He designs furniture, furniture components, appliances, appliance components, automobile components, and computer software.

Petitioner was employed by and through many of the engineering contracting firms in Michigan from Grand rapids, to Detroit. An engineering contracting firm called Pioneer Engineering located a job for Mr. Shore in the Detroit area beginning June 1982, which terminated November 1983.

Since Mr. Shore still maintained his residence in Belding, Michigan, and worked in the Detroit area, Mr. shore lived in the Detroit area during the week.

Belding is approximately 150 miles Northwest of Detroit. Mr. Shore deducted his living expenses incurred in pursuit of his work while he was away from Belding.

Mr. Shore expected the job to last only a few months, then to return to employment through the contracting firm in the Belding or Grand Rapids area.

Belding is about 30 miles northeast of Grand Rapids. However, subsequent to this first place of employment, Mr. Shore held other short term employment through contracting firms in the Detroit area, still maintaining his residence in Belding, where he returned on weekends.

On May 21, 1987 Mr. Shore was audited and told that such expenses were not deductible.

Argument

The basis of this writ is to show how the tax court erred by mentioning that the petitioner's, Mr. Shore, initial move may have been temporary at first, however the tax court passed on deciding this issue and determined that Mr. Shore's employment evolved into indefinite employment. From the tax courts determination that Mr. Shore's final employment was classified as indefinite, the court then incorrectly decided that all of Mr. Shore's deductions should be disallowed, instead of properly bifurcating Mr. Shore's employment as temporary and indefinite. This would of course allow those deductions taken while Mr. Shore's employment was temporary to be allowed.

Pursuant to IRC S 162(a). This is especially true since Mr. Shore was Following the instructions of IRS Publication 463 1984,5; which states, "If your assignment or job away from your regular place of work is temporary, that is if its end can be foreseen within a fixed and reasonably short time, of usually less than one year, your tax home does not change. You are considered to be away from home for the whole period and your travel expenses are deductible." All of Mr. Shore's jobs for which he deducted expenses lasted less than one year.

No. 90-2272

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JAMES R. SHORE,	) Filed
Petitioner-Appellant,	) Jan 22, 1992
	) Leonard
v.	) Green,
	) Clerk
COMMISSIONER OF INTERNAL	) ORDER
REVENUE,	)
Respondent-Appellee.	)

BEFORE: GUY, Circuit Judge; BROWN, Senior Circuit Judge; and CHURCHILL, Senior District Judge.*

The petitioner has sought rehearing of this court's November 7, 1991 order affirming the United States Tax Court's decision which disallowed certain of his claimed tax deductions for the years

1984 and 1985.

After carful consideration, the panel concludes that it acted under no misapprehension of law or fact in issuing its order. Fed. R. App. P. 40(a).

Accordingly, it is ORDERED that the petition for rehearing be, and it hereby is denied.

ENTERED BY ORDER OR THE COURT

/S/ Leonard Green

Clerk

*The Honorable James P. Churchill, U.S. District Judge for the Eastern District of Michigan, sitting by designation.

Case No. 90-2272

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JAMES R. SHORE,	) FILED
Petitioner-Appellant,	) May 14, 1991
v.	) Leonard
COMMISSIONER OF INTERNAL	) Green,
REVENUE,	)
	Clerk
Respondent-Appellee.	)
	ORDER

BEFORE: KEITH and MILBURN, Circuit Judges; and HILLMAN, District Judge.*

* The Honorable Douglas W. Hillman, Senior District Judge for the Western District of Michigan, sitting by designation.

Petitioner appeals an order of the Tax Court finding deficiencies in his income tax payments for 1984 and 1985 and finding additional taxes due.

Petitioner now seeks to have this court enjoin the Internal Revenue Service from attempts to collect his federal tax deficiencies for 1984 and 1985 by levy on his assets. The respondent opposes such an injunction.

In order for petitioner to obtain stay of the Tax Court's order pending appeal, he must comply with the procedure set forth in 26 U.S.C. s 7485(a). See Denison v. Barlow, 563 F Supp. 263, 264 (E.D. Ark: 1983): Akers v. United States, 539 F. Supp. 831, 83 (D. Conn. 1982), aff'd 718 F.2d 1084 (

Cir. 1983); see also Fed. R. App. P. 14 (making Fed R. App. P. 8 innapplicable to appeals from decisions of the Tax Court) Petitioner has not posted a bond as required by 26 U.S.C. s 7485(a) and therefore is not entitled to a stay. Moreover, as a general rule, the court is prohibited from enjoining the assessment or collection of any tax. 26 U.S.C. s 7421(a).

It therefore is ORDERED that petitioner's request to stay or enjoin the collection of taxes pending appeal is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

No. 90-2272

UNITED STATED COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JAMES R. SHORE,) FILED

Petitioner-Appellant,) Nov 7,

v.) Leonard

COMMISSIONER OF INTERNAL) Green,

REVENUE,) Clerk

Respondent-Appellee.) ORDER

BEFORE: GUY, Circuit Judge; BROWN, Senior Circuit Judge, and CHURCHILL, Senior District Judge.*

James R. Shore, a pro se Michig resident, appeals a judgment of the

* The Honorable James P. Churchill, Senior U.S. District Judge for the Eastern District of Michigan, sittin designation.

United States Tax Court denying certain of his tax deductions for the years 1984 and 1985. The case has been referred to a panel of the court pursuant to rule 9(a), Rules of the Sixth Circuit. Upon examination, the panel unamimously agrees that oral argument is not necessary. Fed. R. App. P. 34(a).

Shore has been enployed since 1982 as a free lance automotive designer in the Detroit, Michigan metropolitan area. During this period, he owned a home in Belding, Michigan, a small community 150 miles west of Detroit. Beginning in 1984, Shore rented an apartment in the Detroit metropolitan area which he used during the week. Shore returned to his home in Belding on the weekends. In August 1989, Shore filed amended income

tax returns for the year 1984 and 1985.

He claimed a deduction of $11,508.00 for travel, entertainment and living expenses and deduction of $3,508.70 for automobile expenses for the year 1984.

For the year 1985, Shore claimed deductions of $11,088.00 for travel, entertainment and living expenses and deduction of $3,700.00 for automobile expenses. In his original income tax returns, Shore claimed a deduction of $3,000.00 as rent for a home office for both 1984 and 1985. Subsequently, the Commissioner sent Shore a notice of deficiency disallowing the claimed deductions for travel and entertainment, automobile and home office expenses for both the 1984 and 1985 tax years. The

deficiency notices also assessed penalties for negligence and substantial understatement of income tax liability for both 1984 and 1985. Shore filed a petition for review in the United States Tax Court. After a hearing, the Tax Court upheld the disallowance of the claimed deductions. Thereafter, Shore filed a timely motion for reconsideration in the tax court, which was denied. Shore has filed a timely appeal and requests the preparation of a transcript at government expense in his brief on appeal.

Upon review, we conclude that the tax court has properly interpreted and applied the governing statute, 26 U.S.C. s 6653(a)(1) & (2), and that the tax

court's findings of fact are not clearly erroneous. See Commissioner v. Duberstein, 363 U.S. 278 (1960); Humana Inc. v. Commissioner, 881 F.2d 247, 251 (6th Cir. 1989); Rose v. Commissioner, 868 F.2d 851, 853 (6th Cir. 1989). Accordingly, the request for a transcript at government expense is denied, and the tax court's judgment is hereby affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green

Clerk

UNITED STATES TAX COURT

JAMES R. SHORE,)

Petitioner) Docket No.

v.)

) 31001-88

COMMISSIONER OF INTERNAL)

REVENUE,)

Respondent.)

DECISION

Pursuant to the opinion of the Court filed May 31, 1990, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies in income taxes and additions to the tax due from the petitioner as follows:

Year 1984 Income Tax $7,102.00

Additions to the Tax: I.R.C. ss 6653(a) (1) $292.10 6653(a) (2) * 6661 $1,775.50

Year 1985 Income Tax $7,198.00

Addition to the Tax: I.R.C. ss 6653(a) (1) $292.55 6653(a) (2) * 6661 $1,799.50

*50% of the interest due on $5,842.0 from April 15, 1985 to the earlier o the assessment date or payment date.

*50% of the interest due on $5,851.0 from April 15, 1986 to the earlier o the assessment date or payment date.

(Signed) L.W. Hamblen, Jr.

Judge.

Entered: Aug 8, 1990

* * * * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's prejudice to the right of either party to contest the correctness of the decision entered herein.

ABRAHAM N. M. SHASHY, JR.
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/s/ James R. Shore
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T. C. Memo. 1990-272

UNITED STATES TAX COURT

JAMES R. SHORE, Petitioner v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 31001-88. Filed May 31, 199(

James R. Shore, pro se.

Mark I. Siegel, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINIO

HAMBLEN, Judge: Respondent, in his notice of deficiency issued on Septembe 14, 1988, determined the following deficiencies in, and additions to, petitioner's 1984 and 1985 Federial income tax:

Year 1984 Deficiency $8,045.24 Section 6653(a)(1) $402.26 Section 6653(a)(2) * Section 6661 $2,011.31

Year 1985 Deficiency $8,551.46 Section 6653(a)(1) $427.57 Section 6653(a)(2) * Section 6661 $2,137.87

* Fifty percent interest on the portion of the deficiency attributable to negligence.

The deficiencies determined by respondent are due in large part to the disallowance of business expenses attributable to petitioner in 1984 and 1985. After concessions, the issues for our decision are (1) whether petitioner was "away from home" within the meaning of section 162(a)(2) and therefore entitled to deductions for travel expenses (including meals, lodging, and automobile expenses) as claimed or his 1984 and 1985 tax returns; (2) whether petitioner is entitled to claim a rental deduction of $3,000 for storage of documents in 1984 and 1985 respectively;(3) whether petitioner is liable for additions to tax due to negligence under section 6653(a)(1) and

(2); and (4) whether petitioner is liable for additions to tax under 6661 for substantial understatement of his income tax for the years 1984 and 1985

FINDING OF FACT

Some of the facts have been stipulated and are found accordingly. The stipulation of facts and accompanying exhibits are incorpoated herein by this reference.

All section references are to the Internal Revenue Code of 1954, as amended and in effect for the years in issue, and all rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

At the time the petition was filed in this case and during the years in issue petitioner James R. Shore resided in Belding, Michigan (hereinafter Belding), located approximately 150 miles from Detroit, Michigan (hereinafter Detroit).

Petitioner first moved to Belding as a child in 1949 when his parents bought the Gambles dime store. After finishing high school in Belding, he joined the military in 1954 and moved out of town. In approximately 1969, petitioner moved back to Belding. While continuing to reside in Belding, he worked for one year as a draftsman in Greenville, Michigan; for ten years as a furniture designer in Grand Rapids, Michigan; and for six years as project engineer with an industrial equipment

company in Belding. Petitioner the became a self-employed industrial designer drawing his clients from Detroit, Grand Rapids, and Belding. I 1982, petitioner began working steadil as a freelance automotive designer in the greater Detroit metropolitan area exclusively. Although Belding is 150 miles away from Detroit, petitioner continued to maintain his residence in Belding. He did, however, rent an apartment in Detroit for his use on weekdays. He drove back to Belding nearly every weekend.

As an automotive designer, petitioner worked for a series of contract companies who hired him to design a wide range of complex vehicle parts for well-known car manufacturers

including Cadillac, Ford, and Isuzu. By 1984, petitioner was a skilled designer having had experience designing such things as exhaust and fresh air cooling systems, fuel filters, power steering mechanisms, and hydraulics of a military tank. It is customary for freelance automotive designers to be laid off when their particular design projects are completed. The automobile design assignments petitioner worked on from June 1982 to December 1985 generally lasted between 2 to 20 months. His employment history since 1982 is shown as follows.

Employer Pioneer Engineering, Warren, MI ** June 1982 thru Nov 1983 $67,882.

Employer Engineering Tech, Troy, MI ** Nov. 1983 thru Jan 1984 $14,280.

Employer Modern Engineering, Troy, MI Feb. 1984 thru Apr 1984 $7,463. Employer Troy Design, Troy, MI Apr 1984 thru Dec 1985 $67,057. Sheller Globe, Detroit, MI Dec 1985 thru Dec. 1986 $96 335. Aero Detroit, Troy, MI Dec. 1986 May 1987 $2,674. Pioneer Engineering, Warren, MI May 1987, Feb. 1990 ----. ** (Warren, Michigan and Troy, Michigan are both located within the greater Detroit metropolitan area.

On his 1984 tax return, petitioner claimed a travel deduction of $11,508 for temporary living expenses in Detroit (274 nights at $42.00 per night), and car and truck expenses of $3,753.70. on his 1985 tax return, petitioner claimed a travel deduction of $11,088 for temporary living expenses (264 nights at

$42 per night), and car and truck expenses of $3,700. At no time has petitioner presented any documentation to support these automobile and living expense deductions.

On his 1984 and 1985 income tax returns, petitioner deducted $3,000 for the rent of a home "office" ($250 per month) in which petitioner stored design blueprints and other work-related documents. Petitioner's purported "office" is located in an unfinished room adjoining his basement. The room is small, measuring five feet by ten feet. At trile petitioner presented monthly rent receipts for the $3,000 annual office deduction and two snapshots. The handwritten receipts

were dated, signed by the purported landlord, and inscribed with various memorandums such as Rent-January," "March Occupancy," "May Office Rental,"and "storage space."

OPINION

Petitioner seeks to deduct as ordinary and necessary business expenses the amounts he spent in driving between Belding, Michigan and Detroit on weekends, as well the living expenses he incurred while working in the Detroit area in 1984 and 1985. Section 162(a)(2) allows a deduction for travel expenses, including meals and lodging which are not lavish or extravagant, "while away from home in the pursuit of a trade or business." The purpose

behind the deduction is to allow a taxpayer relief from the additional or duplicate expenses incurred while away from home on business. Brandl v. Commissioner, 513 F.2d 697, 699 (6th Cir. 1975), affg. a Memorandum Opinion of this Court; Bochner v. Commissioner, 67 T.C. 824, 827 (1977). Thus, one of the conditions that must be satisfied before a deduction is allowed for travel expenses under section 162(a)(2) is that the taxpayer must show that they were incurred "While away from home." Commissioner v. Flowers, 326 U.S. 465 (1946), rehearing denied 326 U.S. 812 (1946).

This Court has consistently held that for purposes of section 162(a)(2), "home" means the taxpayer's principal

place of business or employment. Michaels v. Commissiones, 53 T.C. 269, 273 (1969); Whitaker v. Commissioner, 24 T.C. 750 (1955). It is well established that if a taxpayer elects for personal reasons to reside far from his place of employment, the expense in driving to and from work and the cost of meals and lodging at his place of employment are nondeductible personal expenses. Sec. 262. Similar expenses incurred while employed away from home temporarily are deductible traveling expenses within the meaning of section 162(a)(2). It would be unreasonable to expect petitioner to move his residence to a temporary work location. Tucker v. Commssioner, 55 T.C. 783 (1971). However, if temporary employment ripens into employment of

substantial or indefinite duration, the situs of such employment becomes petitioner's "tax home" for purposes of the statute, and the travel expenses incurred there are not deductible. Commissioner v. Peurifoy, 254 F.2d 483 (4th Cir. 1957), affd. 358 U.S. 59 (1958); Norwood v. Commissioner, 66 T.C. 467, 470 (1976). Thus, the first issue of proving that his employment in the metropolitan area of Detroit during the years 1984 and 1985 was "temporary" as opposed to "indeinite." Rule 142(a).

Petitioner contends that the work he did on each design project constituted a separate and distinct temporary job and thus his "home" for tax purposes was in Belding, Michigan, throughout the years in issue. In

support of his position, petitioner maintains that prior to and during the years in issue he worked for a series o different companies on separate, "short-term" employment contracts, all of which lasted only 2 to 20 months. I 1984 and 1985 alone, petitioner worked under four differend design contracts for four different companies-- Engineering Tech., Modern Engineering, Troy Design, and Sheller Globe.

We do not agree that petitioner's employment in Detroit was temporary. The fact that petitioner worked for fou different companies in Detroit within two years is not determinative of whether his employment is Detroit was temporary. Instead, the proper inquiry

is whether petitioner's employment is the Detroit area should have been expected to continue indefinitely so that "it would be reasonable under the circumstances *** (for petitioner) to move to the location of his new employment." Markey v. Commissioner, 490 F.2d 1249, 1253 (6th Cir. 1974); Commissioner v. Mooneyhan, 404 F.2d 522, 527 (6th Cir. 1968); Tucker v. Commissioner, supra. To qualify for his claimed business deductions under the temporary-indefinite rule, petitioner must prove that it was reasonable under the circumstances to have expected at the beginning of each taxable year the his employment in Detroit would be temporary. Commissioner v. Peurifoy, Supra; Rule 142(a).

We are persuaded from the record that petitioner, at the beginning of 1984, and at the beginning of 1985, should have reasonably expected to continue working in Detroit as an automotive designer indfinitely. It is clear from his own resume and the stipulation of facts that petitioner has worked steadily in the Detroit area for at least 17 months just prior to 1984. Moreover, petitioner asserts that as he is a valued employee and well-qualified designer with years of experience in design, that his jobs often entail more than one project, and that they sometimes last longer than the average. In light of the facts that petitioner was a well-paid (and apparently highly valued) expert in automotive design and

that he was working in a major manufacturing center of the American car industry, we find that it was unreasonable for him to expect that his design assignments in the Detroit area would not continue to be forthcoming. Indeed, petitioner has in fact found steady work in Detroit since 1982. He indicated at trial that he presently expected to work in Detroit until he decided to retire.

We also note that petitioner had no real possibilities of finding work as an automotive designer in Belding, an outlying town with a population of approximately 5,000. Petitioner testified that prior to beginning work in Detroit he had difficulty making a living in Belding as a self-employed

contract designer and had to look outside of Belding for clients. Petitioner also indicated that he had grown fond of Belding in his boyhood, and that he chose to live there because it was a pleasant, bedroom community. Although petitioner had worked in Belding prior to becoming a freelance automotive designer in Detroit, this connection with his hometown is insufficient, in and of itself, to justify designating Belding as petitioner's tax home. To hold otherwise would place petitioner's home where his heart lies, rather than where his work is, and would render section 162(a)(2) a vehicle by which to deduct the full spectrum of on's personal and living expenses. Bochner v.

Commissioner, supa. We find therefore, that Detroit was petitioner's "tax home" in 1984 and 1985, and that his living expenses in Detroit and the cost of his transportation to Belding on weekends were nondeductible personal expenses under section 162(a)(2). We further note that petitioner failed to substantiate any of his claimed travel expenses by keeping receipts and contemporaneous records. Secs. 162(a)(2), 6001.

We next consider whether petitioner is entitled to the deduction of $3,000 that he claimed as an "office expense" on both his 1984 and 1985 tax returns. Petitioner failed to present any evicence to establish that the small basement room in his Belding residence

was the principal place of his business. Sec. 280A(a). Petitioner failed to offer any evidence to show that maintenance of a home office was "essential to his business," that he "spends substantial time (working) there," and that he had "no other location available to perform the office functions of the business." Soliman v. Commissioner, 94 T.C. 20, 29 (1990). Section 280A(c)(2) provides an exception for certain storage use to the general disallowance of deductions in commection with the business use of a residence. However, petitioner does not ennt the requirements since his residence is not the sole location of his business and his blueprints are not being held as inventory. Sec. 280A(c)(2).

Accordingly, we find that petitioner is not entitled to deduct any part of the basement retal as a home office expense.

We next consider whether petitioner is liable for the additions to tax due to negligence under section 6653(a)(1) and (2). Section 6653(a)(1) provides for an addition to tax equal to five percent of the total underpayment if any part of the underpayment is due to negliegence or intentional disregard of the rules or regulations. Section 6653(a)(2) provides for an addition to tax of 50 percent of the interest payable under section 6601 with respect to the portion of the underpayment attrubutable to negligence or intentional disregard of the rules or

regulations accruing from the date the underpayment was due (without regard to any extension) to the date of the assessment, or if earlier, the date of the payment of the tax. Negligence is defined as a failure to exercise the due care that a reasonable and ordinarily prudent person would exercise under the circumstances. Neely v. Commissioner, 85 T.C. 934, 947 (1985). See Antonides v. Commissioner, 91 T.C. 686, 699 (1988), affd. 893 F.2d 656 (4th Cir. 1990). Petitioner bears the burden of proving that the underpayment was not due to negligence or intentional disregard of rules or regulations. Bixby v. Commissioner, 58 T.C. 757, 791-792 (1972); Enoch v. Commissioner, 57 T.C. 781, 802-803 (1972); Rule

142(a). We note that although petitioner was aware that travel expenses are deductible under section 162(a) only if they are incurred "away from home," he failed to keep any records to substantiate his deductions as required by section 6001. His failure to recognize that without even minimal supporting documentation he would not be entitled to the benefit of travel and living expense deductions under section 162(a) shows a lack of due care. Sec. 6001. Accordingly, we find that except for the portion of the understatement attributable to petitioner's disallowed deductions for basement storage, for which he submitted all receipts and two photographs, petitioner is liable for the additions

to tax under section 6653(a)(1) and (2) for negligence.

The final issue for consideration is whether petitioner is liable for an addition to tax under section 6661(a) for substantial understatement of income tax liability. Section 6661(a) provides for an addition to tax of 25 percent of the amount of the underpayment of tax attributable to a substantial understatement of income tax.

A substantial understatement of tax exists if the understatement exceeds the greater of $5,000 or the percent of the tax required to be shown on the return for the taxable year in issue. Sec. 6661(b)(A). Where an item is not attributable to a tax shelter, the understatement may be reduced if the

taxpayer's treatment of the item was based on substantial authority or if the relevant facts affecting the item's tax treatment were adequately disclosed on the return or in a statement attached thereto. Secs. 6661(b)(2)(B)(i) and (ii); 6661(b)(2)(C). See Schirmer v. Commissioner, 89 T.C. 277, 283-284 (1987). Respondent has determined, and we agree, that petitioner substantially understated his income tax on his 1984 and 1985 tax returns. Petitioner has not claimed that substantial authority exists for his understatement of tax, and we find that he did not adequately disclose relevant facts on either his return or in an attached statement that might have explained whether he acted reasonably in understating his income.

Therefore, petitioner is liable for the additions to tax under section 6661(a).

To reflect concessions and the foregoing,

Decision will be entered under Rule 155.